In the High Court of Judicature at Madras

Dated: 13/12/2002

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice K. GNANAPRAKASAM

Civil Miscellaneous Appeal No.542 of 1996

1. P. Chandramouli

2. M/s. United India Insurance
Company Ltd., rep. By its
Branch Manager, Ist Floor
Super Bazaar, Singara Thope,
Trichy 8. .. Appellants

-Vs-

1. Tmt. K. Gomathi Ammal (deceased)
2. Alamelu
3. Meenambigai
4. Jayalakshmi
5. Pankajam
6. Rama Thilagam .. Respondents
(R.2 to R.6 are brought on record
as LRs., of the deceased R.1
as per Order dt.13.12.2002 made
in CMP.Nos.17889 & 17890/2001).

Civil Miscellaneous Appeal is filed under Section 173 of the
Motor Vehicles Act, 1988 against the Judgment and decree dated 28.02.1995 made
in M.A.C.T.O.P.No.769 of 1992 on the file of the Motor Accidents Claims
Tribunal (4th Additional Subordinate Judge) Madurai.

!For appellants : Mrs. N.B. Surekha
for Mr. R. Vedantham

^For respondent : Mrs. Pushpa Sathyanarayanan
for M/s. T.R. Rajaraman

:JUDGEMENT

(Judgment of the Court was made by P. SATHASIVAM,J.,) The
owner and insurer of the lorry bearing registration No. TAN 4334 are the
appellants in the above appeal.

2. In respect of the death of one Dr. S.K. Chockalingam in a motor vehicle accident that had taken place on 25.01.1992, the respondent herein, who is the mother of the deceased filed a claim petition, praying for compensation of Rs.9,04,000/-. Before the Tribunal, the claimant examined herself as P.W.1 and three more witnesses as P.Ws.2 to 4 and also marked Exs.A.1 to A.29 in support of her claim for compensation. On the side of the respondents therein, neither anyone was examined nor any document marked in support of their defence. The Tribunal, on appreciation of the oral and documentary evidence and after holding that the accident was caused due to the negligence of the driver of the lorry in question, passed an award for Rs.3,10,000.00 with interest at the rate of 12% per annum from the date of petition till the date of deposit. Questioning the said award, the insured and the insurer of the lorry have preferred the present appeal questioning the quantum of compensation determined by the Tribunal.

3. Heard the learned Counsel for the appellants as well as the respondent.

4. Mrs. Pushpa Sathyanarayanan, learned counsel for the respondent - claimant raised an objection regarding maintainability of the above appeal, since the appellants question only the quantum of compensation determined by the Tribunal. According to her, inasmuch as the first appellant - owner of the lorry was set ex parte before the Tribunal and did not contest the claim petition, in the absence of specific permission by the Tribunal under Section 170 (b) of the Motor Vehicles Act, 1988 to contest the claim on all aspects by joining with the owner, the second appellant, i.e., Insurance Company is not entitled to question the finding regarding negligence and quantum of compensation. On the other hand, learned counsel appearing for the appellants would contend that since the present appeal is by the insured and the insurer, the appeal is maintainable and the appellants are entitled to question the finding of the Tribunal on all aspects.

5. In the light of the objection raised, we shall consider the maintainability of the appeal at the foremost. Before the Tribunal, with reference to various contentions made, the first appellant herein - first respondent therein, who is the owner of the lorry did not file a counter statement and he was set ex parte. It is the second appellant - second respondent therein, which is the Insurance Company filed a counter statement, contesting the claim petition. It is to be noted that the Insurance Company has not obtained permission under Section 170 (b) of the Motor Vehicles Act, 1988 to contest the appeal on all aspects. The present appeal has been filed by the owner and the Insurance Company. In this back ground, let us consider the various decisions relied on by both counsel.

6. Learned counsel for the respondent - claimant heavily relied on the recent decision of three Judge Bench of the Supreme Court in the case of National Insurance Co., Ltd., vs. Nicolletta Rohtagi reported in 2002 (4) C.T.C. 243. The question that was considered by the Supreme Court is, " Where an insured has not preferred an appeal under Section 173 of the Motor Vehicles Act, 1988 against an award given by the Motor Accidents Claims Tribunal, is it open to the insurer to prefer an appeal against the award by the Tribunal questioning the quantum of compensation, as well as finding as

regards the negligence of the offending vehicle? "
Their Lordships have referred to Sections 147 and 170 of Act, 1988. They also referred to the corresponding provisions from M.V. Act, 193 9. After referring to the relevant provisions from 1939 Act and 1988 Act, the Hon'ble Supreme Court has held thus:-
"Thus, in common law, an insurer was not permitted to contest a claim of a claimant on merits i.e. offending vehicle was not negligent or there was contributory negligence. The insurer could contest the claim only on statutory defences specified for in the statute. "
Before arriving at a conclusion with reference to the question posed before it, Their Lordships have referred to the following cases:
1. Narender Kumar and another vs. Yarenissa and others (1998 (9) S.C.C. 202) ;
2. Chinnama George and other vs. N.K. Raju and another (2000 (4) S.C.C. 130) ;
3. Rita Devi and others vs. New India Assurance Co., Ltd., and another (2000 (5) S.C.C. 113) ; and
4. United India Insurance Co., Ltd., vs. Bhushan Sachddeva and others (2002 (1) C.T.C. 380 = 2002 (2) S.C.C. 265).

7. In Narender Kumar's (1998 (9) S.C.C. 202)case, the question that arose was whether there can be a joint appeal by an insurer and owner of the offending vehicle. It was held that even in the case of a joint appeal by the insurer and the owner of an offending vehicle, if an award has been made against the tortfeasors as well as the insurer, even though an appeal filed by the insurer is not competent, it may not be dismissed as such. It is further held that the tortfeasor can proceed with the appeal after the cause title is amended by deleting the name of the insurer.

8. In the case Chinnama George (2000 (4) S.C.C. 130), it was held that if none of the conditions as contained in sub-section (2) of Section 149 exists for the insurer to avoid the liability, the insurer is legally bound to satisfy the award and the insurer cannot be a person aggrieved by the award. In such a case, the insurer will be barred from filing an appeal against the award of the Tribunal. It was also held that the insurer cannot maintain a joint appeal along with the owner or driver if defence of any ground under Section 149 (2) is not available to it.

9. In the case of Rita Devi (2000 (5) S.C.C. 113), it was held that the insurer not having obtained permission under Section 170 of 1988 Act, is not entitled to prefer any appeal to the High Court against the award given by the Tribunal on merits.

10. In the case of United India Insurance Company Limited (2002 (1) C.T.C. 380 = 2002 (2) S.C.C. 265), it was held that where the insured fails to file an appeal to the High Court against the quantum of compensation awarded by the Tribunal, the insurer is entitled to file an appeal as the insured has failed to contest the claim and in that view of the matter, the insurer could be a person aggrieved.

11. After analysing the relevant provisions from 1939 Act and 1988 Act as well as the above referred decisions of the Supreme Court, ultimately their Lordships in Nicolletta Rohtagi and others have held that the decisions in United India Insurance Company (2002 (1) C.T.C. 3 80) regarding maintainability of the appeal at the instance of an insurer does not lay down the correct view and overruled the same.

12. Mrs. Pushpa Sathyanarayanan, learned counsel for the respondent - claimant, very much relied on the following conclusion in para 26 of the Supreme Court judgment, namely in the case of National Insurance Co., ltd., Chandigarh vs. Nicolletta Rohtagi and others reported in 2002 (4) G.T.C. 243. The following conclusion is pressed into service.

"Thus, unless an order is passed by the Tribunal permitting the insured to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 is satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation on negligence or contributory negligence of the offending vehicle even if the insured has not filed by appeal against the quantum of compensation. ... "

In this regard, it is also relevant to refer the ultimate conclusion of their Lordships.

"31. We have already held that unless the conditions precedent specified in Section 170 of 1998 Act is satisfied an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek permission of the tribunal to contest the claim on the ground available to the insured or to person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of order while filing appeal on grounds specified in sub-sections (2) of Section 149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceedings and in such cases it is open to an insurer to apply to the tribunal for rectification of award. "

13. It is clear from the above decisions that unless the conditions specified in Section 170 of the 1988 Act are satisfied, the Insurance Company has no right of appeal to challenge the award on merits. However, where there is a collusion between the claimants and the insured and the insured does not contest the claim, it is open to the Insurance Company to

seek permission of the Tribunal to contest the claim on the ground available to the insured and if permission is granted, it is open to the insurer to file an appeal against the award on merits. In our case, we have already referred to the fact that the insured did not contest the claim and the insurer though filed a detailed counter statement, did not obtain permission from the Tribunal to contest the claim on all aspects. In such a circumstance, it is open to the Insurance Company to seek permission of the Tribunal to contest the claim on the ground available to the insured and if permission is granted it is open to the insurer to file an appeal against the award on merits. In such a circumstance, as contended by the learned counsel for the respondent the appeal of the Insurance Company questioning negligence and quantum of compensation is liable to be dismissed as not maintainable. However, it is to be noted that even in 2002 (4) C.T.C. 243 (cited supra), though their Lordships have referred to the dictum laid down in the cases of Narender Kumar (1998 (9) S.C. C. 202), Chinnama George (2000 (4) S.C.C. 130), Rita Devi (2000 (5) S.C.C. 113) and United India Insurance Company (2002 (1) C.T.C. 380), ultimately they overruled the view expressed only in United India Insurance Company (2002 (1) CTC 380). In other words, as rightly contended by Mrs. N.B. Surekha, learned counsel for the appellants, their Lordships have not disapproved the view expressed in Narender Kumar's case. We have also carefully perused the entire judgment. As rightly contended, except saying that the decision in the case of United India Insurance Company (2002 (1) C.T.C. 380) has not laid down correct view of law, the view expressed in Narender Kumar has not been disturbed. Here, we have already referred to the fact that the present appeal is by the insured and the insurer of the lorry, which involved in the accident. It is also brought to our notice the Division Bench decision of this Court in the case of P. Anwer Batcha vs. Tamilarasi reported in 2002 ACJ 931 (P. SATHASIVAM and P. THANGAVEL,JJ.,), wherein similar question was considered by the Division Bench. It is seen that after referring to all the earlier decisions of the Supreme Court, various High Courts as well as this Court, the Bench has concluded that the Insurance Company cannot maintain joint appeal along with the owner or driver since none of the defences in Section 149 (2) is available, the appeal of the Insurance Company is not maintainable and liable to be dismissed. After holding that, the Bench further held that "the appeal of the Insurance Company shall stand dismissed as not maintainable, whereas the owner of the vehicle appellant No.1 herein is permitted to pursue the appeal and cause-title to that extent shall be amended by the Registry". It is also brought to our notice another decision of the Division Bench in CMA.No.79 of 2000 dated 31.08 2001 (P. SATHASIVAM and A. SUBBULAKSHMY,JJ.,) wherein similar objection regarding maintainability was raised. Here again, the Bench considered the various provisions and other decisions. After following the decision rendered in C.M.A.No.205 of 1989 dated 01.12.2000 (P. SHANMUGAM AND A. SUBBULAKSHMY,JJ.,) the Court arrived at a conclusion that the appeal filed along with the owner is maintainable and in the light of the decision of the Supreme Court, more particularly, in the case of National Insurance Company vs. Nicolletta Rohtagi reported in 2002 (4) CTC 243. In such a circumstance, inasmuch as the appellant owner of the lorry is entitled to pursue the appeal, we hold that the present appeal is maintainable and reject the objection regarding maintainability raised by the counsel for the respondent - claimant.

14. Learned counsel for the appellants would contend that the amount awarded by the Tribunal is excessive and the same is liable to be reduced. It is seen from the evidence of P.W.1 - claimant that the deceased was her only son. As per the post mortem certificate Ex.P.4, the deceased was aged about 50 years at the time of accident. He was a bachelor and Doctor by profession. At the time of the accident he was working as a Doctor in Meenakshi Mission Hospital, Madurai. He completed his M.B.B.S., course in 1963 as evidenced from Ex.P.7. It is further seen from the evidence of P.W.1 that thereafter, he went to London and worked as a Doctor for 12 years and returned to Madurai in 1990. It is also seen that the deceased has served in Military between 1963 and 1965. Ex.P.11 shows that he was also successful in M.D. Course. Exs.P.16 and 17 show that he was employed as a Doctor in Phaudinor, U.S.A., Thereafter, he went to London for higher studies. She also produced documents to show that he paid substantial amount towards income-tax when he was in U.S.A., and U.K., P.W.3, an administrative Officer in the Madurai Meenakshi Mission Hospital explained the salary and payment made to the deceased. Considering all the above aspects, including higher qualification in medicine, promotional aspects etc., the Tribunal has concluded that the deceased would have earned Rs.10,000/- per month, but for the accident. From and out of the said amount, the Tribunal has concluded that the deceased would have atleast contributed Rs.4,000/- per month to his mother. Taking note of the fact that on the date of the accident the claimant was 7 2 years old and the deceased was 51 years old, by applying the multiplier of 6 the Tribunal arrived at Rs.2,88,000/- as pecuniary loss to the claimant. After adding Rs.10,000/- towards loss of estate, another Rs.10,000/- towards loss of love and affection and Rs.2,000/- towards funeral expenses, the Tribunal passed an award for Rs.3,10,000/- with interest at the rate of 12% per annum. Considering the fact that the deceased was a qualified Doctor, having worked in U.S.A., and U.K., and his last income as explained by P.W.3 and of the fact that the deceased was 51 years old at the time of the accident and the claimant is 72 years old, we are of the view that the award amount cannot be said to be either excessive or unreasonable. On the other hand, we are in agreement with the amount arrived at by the Tribunal. Accordingly, we confirm the same.

15. Though relying on the recent judgments of the Supreme Court, learned counsel for the appellants contended that the rate of interest, namely 12% per annum is on the higher side, considering the fact that the accident had occurred on 25.01.1992 and also of the fact that the said objection was not taken in the memorandum of appeal grounds, we are not inclined to disturb the rate of interest as awarded by the Tribunal. Accordingly, we reject the said contention also.

In the light of what is stated above, we do not find any merit in the appeal; consequently, the same is dismissed. No costs.

Index:Yes
Internet:Yes
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To
1. The 4th Additional Subordinate Judge
(MACT), Madurai (with records).

2. The S.O., V.R. Section, High Court,
Madras.